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**From:** Nagrani, Kavita [Nagrani.Kavita@epa.gov]  
**Sent:** 1/14/2021 8:17:57 PM  
**To:** Kupchan, Simma [Kupchan.Simma@epa.gov]; Beck, Whitney [beck.whitney@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Hurl, Kathy [Hurl.Kathy@epa.gov]; McGill, Thomas [McGill.Thomas@epa.gov]; Creswell, Michael [Creswell.Michael@epa.gov]; Laycock, Kelly [Laycock.Kelly@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Parker, Christopher [Parker.Christopher@epa.gov]; Wade, Alexis [Wade.Alexis@epa.gov]  
**Subject:** RE: Codification rule of FL 404 program

Thanks, Simma!

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**From:** Kupchan, Simma <Kupchan.Simma@epa.gov>  
**Sent:** Thursday, January 14, 2021 3:07 PM  
**To:** Beck, Whitney <beck.whitney@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Hurl, Kathy <Hurl.Kathy@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>; Creswell, Michael <Creswell.Michael@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Parker, Christopher <Parker.Christopher@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>  
**Subject:** RE: Codification rule of FL 404 program

Officially official indeed. I'll send out a very short summary shortly and a longer summary by tomorrow. They do not appear to seek a preliminary injunction.

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**Earthjustice sues on behalf of conservation groups to stop EPA rubber-stamping Florida wetlands destruction**

*EPA's approval of developer-backed scheme to turn permitting over to state violates U.S. environmental laws*

**\*Please visit [this link](#) to view this release online \***

**Jan. 14, 2021**

**Washington, D.C.** – Earthjustice [filed suit today](#) to stop an attempt by the U.S. Environmental Protection Agency to allow Florida to fast-track wetlands permits for construction projects that will degrade and ruin Florida's natural landscape, all in violation of federal environmental laws.

While a worldwide pandemic is threatening lives and livelihoods across the United States, the U.S. Environmental Protection Agency is green lighting Florida's proposal to take over the federal program that issues permits when developers and others want to fill sensitive marshes, cypress forests, ponds and other wetlands – Section 404 of the Clean Water Act. In EPA's rush to push this through, the agency skirted procedural requirements -- failing even to make the state program legally effective.

Earthjustice is representing the Center for Biological Diversity, Defenders of Wildlife, the Sierra Club, the Conservancy of Southwest Florida, the Florida Wildlife Federation, Miami Waterkeeper, and St. Johns Riverkeeper in the case filed today in the U.S. District Court for the District of Columbia.

"This reckless scheme violates several of our bedrock laws, including the Endangered Species Act and the Clean Water Act, and lets developers avoid the National Environmental Policy Act, also known as 'the people's environmental law,'" said Tania Galloni, Earthjustice Managing Attorney for Florida. "EPA is lowering the bar to allow a state, for the first time, to run the federal wetlands program without meeting federal standards. Developers have called this the 'holy grail'

because it would make it easier, faster and cheaper for them to get permits for big projects with less oversight and accountability for environmental impacts.”

“Florida’s record of wetlands protection is already abysmal,” said Earthjustice attorney Bonnie Malloy, “and now is not the time for the federal government to turn over a massive Clean Water Act program to a state with a shrinking budget amid the economic losses in the pandemic. It is deeply troubling that EPA and Florida rushed this process in the midst of a pandemic when families are focused on their health, communities and jobs. They were so hurried, in fact, they failed to follow the necessary procedures to make the transfer of authority legally effective.”

Jason Totoiu, senior attorney at the Center for Biological Diversity, said: “The toxic algae blooms that now plague Florida are a direct result of the state’s decades-long failure to protect our waterways from wildlife-choking pollution. Now the state wants to make it even easier to dredge and fill wetlands that help filter these pollutants from entering our lakes, estuaries, and springs. Floridians will not stand for this absurd backward step that will only increase harm to the wild places that make Florida so special.”

Amber Crooks, Environmental Policy Manager for the Conservancy of Southwest Florida, said: “As Florida and its residents grapple with a never-ending onslaught of growth and development, protection for our natural resources should be strengthened, not further weakened.”

Kelly Cox, General Counsel for Miami Waterkeeper, said: “EPA’s decision undermines the intent of the Clean Water Act 404 program - to provide important oversight and scrutiny over our vulnerable wetlands. Instead, it puts these places directly in the line of fire. This decision is deeply disappointing and runs contrary to the public interest. The state of Florida and the federal government have once again prioritized special interests and the development-driven bottom line over environmental protection.”

In their lawsuit, the groups point out that the U.S. Environmental Protection Agency’s approval of Florida’s application to assume jurisdiction over the Clean Water Act permitting program is unlawful because Florida fails to demonstrate adequate authority to carry out the wetlands permitting program, fails to ensure protection of animals and plants under the Endangered Species Act, and fails to demonstrate it has sufficient funding and staffing to implement and enforce the program. The state program does not have equivalent permit requirements, enforcement authority, access to courts, public notice, public participation opportunities, and other components that are integral parts of the federal program. The EPA rushed to approve this program so that it may take effect by January 19, 2021, despite these and many other substantial gaps in the state’s proposal.

The groups are also challenging decisions that the U.S. Fish and Wildlife Service and U.S. Army Corps of Engineers made in connection with EPA’s review of Florida’s application to assume responsibility for wetlands permitting. Specifically, the U.S. Fish and Wildlife Service violated the Endangered Species Act by failing to ensure there would be “no jeopardy” to protected animals and plants if Florida took over the program and granting broad protection to developers who “incidentally” harm protected species. The U.S. Fish and Wildlife Service also created an unlawful scheme for purportedly reviewing the state’s decisions on individual permits that may harm federally protected species. And the U.S. Army Corps of Engineers violated the Administrative Procedure Act and Rivers and Harbors Act with its grossly truncated list of waters that it will continue to oversee.

Cris Costello, Organizing Manager of the Sierra Club, said: “We are acting to set aright the present topsy turvy state of affairs. This is an especially egregious example of what the DeSantis DEP has done over and over again now -- join forces with Florida’s most callous polluters in assaults on our environment all the while claiming to be doing it a favor. The fact that Trump’s EPA blessed this assault is par for the course.”

“Giving Florida the green light to issue permits to dredge and fill wetlands threatens the diversity of wildlife that live there,” said Lindsay Dubin, staff attorney at Defenders of Wildlife. “Endangered Florida panthers, endangered red-cockaded woodpeckers, and threatened Eastern indigo snakes are among the species that could be impacted if the state of Florida assumes permitting responsibilities without the proper laws, resources, and oversight in place. With more

than 1 million species at risk of extinction worldwide, the clock is ticking. We should be protecting these species, not making it easier to destroy their habitat.”

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Julie Hauserman  
Earthjustice Outreach  
111 South Martin Luther King, Jr. Blvd  
Tallahassee, FL 32309  
T: 850-681-0031  
C Ex. 6 Personal Privacy (PP)  
earthjustice.org

facebook.com/earthjustice  
twitter.com/earthjustice



*Because the earth needs a good lawyer*

Simma Kupchan  
EPA Office of General Counsel  
Water Law Office  
WJC North Building # 7426Q  
202-564-3105

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**From:** Beck, Whitney <[beck.whitney@epa.gov](mailto:beck.whitney@epa.gov)>  
**Sent:** Thursday, January 14, 2021 2:58 PM  
**To:** Calli, Rosemary <[Calli.Rosemary@epa.gov](mailto:Calli.Rosemary@epa.gov)>; Hurlid, Kathy <[Hurlid.Kathy@epa.gov](mailto:Hurlid.Kathy@epa.gov)>; McGill, Thomas <[McGill.Thomas@epa.gov](mailto:McGill.Thomas@epa.gov)>; Creswell, Michael <[Creswell.Michael@epa.gov](mailto:Creswell.Michael@epa.gov)>; Laycock, Kelly <[Laycock.Kelly@epa.gov](mailto:Laycock.Kelly@epa.gov)>; Ghosh, Mita <[Ghosh.Mita@epa.gov](mailto:Ghosh.Mita@epa.gov)>; Hicks, Matt <[Hicks.Matthew@epa.gov](mailto:Hicks.Matthew@epa.gov)>; Nagrani, Kavita <[Nagrani.Kavita@epa.gov](mailto:Nagrani.Kavita@epa.gov)>; Kupchan, Simma <[Kupchan.Simma@epa.gov](mailto:Kupchan.Simma@epa.gov)>; Parker, Christopher <[Parker.Christopher@epa.gov](mailto:Parker.Christopher@epa.gov)>; Wade, Alexis <[Wade.Alexis@epa.gov](mailto:Wade.Alexis@epa.gov)>  
**Subject:** RE: Codification rule of FL 404 program

Definitely!

The pre-publication notice is now posted online- see the news box on our main 404g page:  
<https://www.epa.gov/cwa404g>

And here's the direct link: <https://www.epa.gov/cwa404g/pre-publication-notice-codifying-epas-adjudicatory-decision-floridas-clean-water-act-section>

Sorry for the cross-posting but there were two different email chains going on 😊

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**From:** Calli, Rosemary <Calli.Rosemary@epa.gov>  
**Sent:** Thursday, January 14, 2021 1:57 PM  
**To:** Hurlid, Kathy <Hurlid.Kathy@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>; Creswell, Michael <Creswell.Michael@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Beck, Whitney <beck.whitney@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Parker, Christopher <Parker.Christopher@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>  
**Subject:** RE: Codification rule of FL 404 program

Alright – This feels like it’s officially officially official. All boxes checked.

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**From:** Hurlid, Kathy <Hurlid.Kathy@epa.gov>  
**Sent:** Thursday, January 14, 2021 11:32 AM  
**To:** McGill, Thomas <McGill.Thomas@epa.gov>; Creswell, Michael <Creswell.Michael@epa.gov>; Marraccini, Davina <Marraccini.Davina@epa.gov>  
**Cc:** Jones, Erica <Jones.Erica@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Beck, Whitney <beck.whitney@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>  
**Subject:** Codification rule of FL 404 program

All, we have heard that the FL 404 codification rule is to be signed by the Administrator today.

Whitney is preparing a pre-pub FRN for the web which we will post to the HQ website. Has the Region 4 website been updated so I can update that link too? Whitney or I will send you a notice when we have uploaded the prepub version and the webpage is live.

Additionally we are trying to secure a copy of the final desk statement and will share that with you when we get it. 😊

Tom, would you please share this update with Jeaneanne, Mary, and Leif. Thanks, - Kathy